



NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

Members:

Chair

February 24, 2014

Administrator Gina McCarthy
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20210

Dear Administrator McCarthy:

On January 9, 2014, 10,000 gallons of a coal processing chemical mix spilled from an above-ground storage facility located on the banks of the Elk River, little more than half a mile upstream from the only public water intake source that services 300,000 residents in nine counties (*where 20 to 29 percent of the population lives below the poverty line and nearly one-fourth of the adult population is uninsured*) around Charleston, West Virginia. By 6:30 pm that day, a "DO NOT USE" advisory had been issued by the water utility, and residents were told not to drink or touch their tap water for an indefinite period of time. This use ban was incrementally lifted across the region starting on January 13, and customers were told to flush the contaminated water out through their home plumbing systems. Despite the lifting of the ban, residents immediately began complaining of health problems, of continued odors, and discolored water. Odors from the chemical mix persist throughout the town of Charleston and outlying areas.

President Obama issued Executive Order 13650 on *Improving Chemical Facility Safety and Security* on August 1, 2013, to improve chemical facility safety and security. The U.S. Environmental Protection Agency (EPA) co-chairs the Chemical Facility Safety and Security Working Group (EO Working Group), which is charged with implementing the Executive Order along with the U.S. Department of Homeland Security and the U.S. Department of Labor, with participation from the departments of Justice, Agriculture, and Transportation. The EO Working Group has recognized that obtaining stakeholder input is critical to the success of the Executive Order. It has scheduled public listening sessions around the country to provide attendees, including environmental and community groups, an opportunity to provide input on topics such as:

- Improving operational coordination with Federal, state, tribal, and local partners;
- Enhanced information collection and sharing;
- Modernizing regulations, guidance, and policies; and
- Identifying best practices in chemical facility safety and security.

The EO Working Group plans to use input from these public listening sessions to inform its efforts to improve chemical regulation and better protect the nation.

West Virginians continue to express concern about their water, their health, and the economic future of their state because of the lack of safety and security at a local chemical facility. Limited information continues to be available about the exact chemical composite released into the public water, the public health impacts of those chemicals, the regulatory and industrial failure that led to the leak, the most accurate and best way to remove the contaminated water from home pipes and hot water heaters, and the long-term impacts of this incident on the Capitol Region, and on the health and safety of one-sixth of the State's population. According to West Virginia Governor Earl Ray Tomblin, in a letter submitted to the Federal Emergency Management Agency (FEMA) on January 27:

"[D]espite best efforts of the company and government many people no longer view their tap water as safe and are continuing to demand bottled water to meet their potable water needs. It is impossible to predict when this will change, if ever."

Yet this facility is but one of many in the Kanawha Valley and throughout the state. The 25-mile area of the Kanawha Valley has received more attention from the U.S. Chemical Safety and Hazard Investigation Board in the last five years than any other area of the same size across the country, yet still, several critical recommendations remain open. Both a lack of regulation and a lack of enforcement are directly linked to the current crisis. What is needed is improved guidance, standards and recommendations regarding chemical facility safety and security that can be enforceable in the community. Additionally, communities need inherently safe technology at such facilities, including safer chemicals, better worker safety training, better data coordination, and better coordination between local, state, and federal officials, and first responders.

As the Agency's advisory committee on environmental justice, which listened to impassioned pleas of West Virginia residents during the NEJAC February 12, 2014 public comment, and given recent events in Charleston, West Virginia, the NEJAC strongly recommends:

- **EPA, and the co-chairs of the EO Working Group, should convene a listening session on President Obama's Executive Order 13650 in Charleston, West Virginia no later than March 31, 2014.** Such a listening session would ensure that the voices and stories of the individuals, organizations, and communities impacted by the recent chemical spill are heard and to shape the future of implementation of the EO. Implementing Executive Order 13650 is a direct way that the regulatory breakdown that led to the chemical leak in Charleston can be addressed.

Sincerely,



Margaret May
Chair

cc: NEJAC Members
Mathy Stanislaus, EPA Assistant Administrator for Solid Waste and Emergency Response
Nancy Stoner, EPA Assistant Administrator for Water
Jim Jones, EPA Assistant Administrator for Chemical Safety and Pollution Prevention
Cynthia Giles, EPA Assistant Administrator for Enforcement and Compliance Assurance
Lisa Garcia, EPA Associate Assistant Administrator for Environmental Justice
Victoria Robinson, NEJAC DFO, EPA Office of Environmental Justice

U.S. ENVIRONMENTAL PROTECTION AGENCY
PROPOSED PLAN for REVIEW of
National Environmental Justice Advisory Council (NEJAC)
Report/Letter of Advice and Recommendations

Report:

Advice Letter Requesting DHS Chemical Facility Safety and Security Listening Session for Charleston, WV

Purpose of Review:

To prepare and transmit to the Administrator's Office (AO) a Summary Document that responds to the advice and recommendations contained in the advice letter and/or, to the extent feasible, addresses the issues identified in the report. The document will summarize:

- (1) EPA's views on the recommendations;
- (2) EPA's actions in response to the NEJAC advice and recommendations and/or issues identified by the NEJAC letter; and/or
- (3) EPA's commitments regarding Agency actions to respond to the NEJAC advice and recommendations and/or issues identified by the NEJAC report.

Focus of Recommendation(s):

This report presents advice and recommendations to EPA regarding ensuring that the voices and stories of the individuals, organizations, and communities impacted by the recent chemical spill in Charleston, WV, help shape the future of implementation of President Obama's Executive Order 13650 on chemical facility safety and security. The NEJAC's advice and recommendations respond to concerns about how the Agency can: inform its efforts to improve chemical regulation and improve operational coordination with Federal, state, tribal, and local partners. The NEJAC recommendation of greatest immediate interest to EPA and members of the public pertains to convening a public listening session as part of President Obama's Executive Order 13650 on chemical facility safety and security.

Process:

The NEJAC report will be transmitted to the AO on March 6, 2014. Upon receipt of this report, the AO will request the Office of Solid Waste and Emergency Response (OSWER), the office(s) primarily responsible for the issues identified in the report, to review and develop a response to the report's advice and recommendations. OSWER will prepare this summary document and submit its response to the AO by April 30, 2014.

Lead Staff Points of Contact:

Nitin Natarajan, OSWER

Target Date for Submission of Summary Response Document to EPA Administrator:
April 30, 2014.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's views on the state of the Union and the progress of the war. The President discusses the military situation, the economy, and the political climate. He also mentions the recent death of General Grant and the appointment of General Sherman to command the Army of the Potomac.

2. The second part of the document is a report from the Secretary of the War Department, dated January 10, 1862. It provides a detailed account of the military operations of the Army of the Potomac during the month of January. The report includes information on the movements of the army, the results of the battles, and the condition of the troops. It also mentions the capture of several forts and the destruction of many enemy supplies.

3. The third part of the document is a report from the Secretary of the Navy, dated January 15, 1862. It provides a detailed account of the naval operations of the United States Navy during the month of January. The report includes information on the movements of the fleet, the results of the battles, and the condition of the ships. It also mentions the capture of several enemy ships and the destruction of many enemy supplies.

4. The fourth part of the document is a report from the Secretary of the Treasury, dated January 20, 1862. It provides a detailed account of the financial operations of the United States Treasury during the month of January. The report includes information on the receipts and expenditures of the Treasury, the condition of the public debt, and the state of the currency. It also mentions the issuance of several new bonds and the collection of many new taxes.

5. The fifth part of the document is a report from the Secretary of the Interior, dated January 25, 1862. It provides a detailed account of the land operations of the United States Interior during the month of January. The report includes information on the movements of the land forces, the results of the battles, and the condition of the land. It also mentions the capture of several enemy forts and the destruction of many enemy supplies.